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Emirates: An Investor's Guide to Environment
Compliance in the Construction Industry**

by Kanishka Singh



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Legislation: Environmental Law Regime in the United Arab Emirates: An Investor's Guide to Environment Compliance in the Construction Industry

by Kanishka Singh*

Abstract

The United Arab Emirates has rather successfully established a reputation for being a construction hotspot. It will also be hosting the Expo in 2020 and the announcement has already triggered an influx of investment with announcement of several new construction projects. Therefore, in this vibrant construction market, it becomes increasingly important for investors and consumers alike to understand the environmental laws applicable at the Federal and Local level and how it affects their businesses. This is also significant as some of the penalties prescribed under the statutes levy heavy fines and can also result in criminal sanctions. This paper seeks to lay out the laws and regulations which business entities need to comply when undertaking construction activities along with giving a brief background about the governmental set-up which enforces such laws.

I. Introduction

The importance of preserving the environment within the UAE is encapsulated in the following words of Sheikh Zayed bin Sultan Al Nahyan, the late President of the UAE:

“We cherish our environment because it is an integral part of our country, our history and our heritage. On land and in the sea, our forefathers lived and survived in this environment. They were able to do so only because they recognized the need to conserve it, to take from it only what they needed to live, and to preserve it for succeeding generations. With God's will, we shall continue to work to protect our environment and our wildlife, as did our forefathers before us. It is our duty and, if we fail, our children, rightly, will reproach us for squandering an essential part of their inheritance, and of our heritage.”¹

The UAE has become synonymous with skyscrapers and it is easy to forget that away from its cosmopolitan cities lies an environment that is complex and beautiful but ultimately fragile. The challenges to the natural environment today are immense as the UAE faces the impact of rapid development and the effects of climate change. An ever increasing immigrant population coupled with mining and oil drilling activities are taking their toll on the environment every

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¹ Quoted from Sheikh Zayed bin Sultan Al Nahyan, the late President of the U.A.E., www.adcbuae.com/Dubai/Government_in_Dubai/Government_of_Abu_Dhabi/127233-12591.html, last visited on 17 June 2014.

day. The Arabian Gulf ecosystem is facing variety of stresses due to its location within the richest oil province in the world that hosts more than 67% of the world oil reserve. Oil related activities that range from exploration to exportation result in adverse effects that cause significant damage to the ecosystem.² In such times, it becomes extremely vital to not only formulate stricter protection laws but also understand the existing environment protection regime within the UAE.

The United Arab Emirates (the “UAE”) is a federation of seven emirates comprising Dubai, Abu Dhabi, Ajman, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain and was formed in 1971. The UAE federal constitution provides for an allocation of powers between the federal government and the government of each emirate. Environmental legislation exists both at the federal level and within each Emirate. The relevant authority and regulations will generally depend on the location of the project but the federal environmental law regime will always be applicable. The body of Environmental Law in the UAE comprises Federal Laws and Local Orders issued at municipal level within certain of the Emirates. The UAE also recognizes certain international conventions and protocols which are detailed below in this article.

II. The Setup

At a federal level, two governmental entities are tasked with overall responsibility for protecting and conserving the environment and promoting sustainable development within the UAE. These are:

- a) the Federal Environmental Agency; and
- b) the UAE Ministry of Environment and Water.

In addition to these entities, there are numerous governmental and nongovernmental groups which assist the federal agencies in the application of the law and the protection of the environment, including the Abu Dhabi Islands Archaeological Survey, the Emirates Environment Group, UAE Agriculture, Environment and Protected Areas Authority, and the Emirates Wildlife Society.

III. Federal and Local Laws

1. Federal Law

Federal Law No. 24 of 1999, for the Protection and Development of the Environment (the “Federal Environmental Law”), details the key federal legislative framework for environmental regulation in the UAE.

² WALID ELSHORBAGHY, “Overview of marine pollution in the Arabian Gulf with emphasis on pollutant transport modelling”, *Academia.edu*, http://www.academia.edu/2595870/Overview_of_marine_pollution_in_the_Arabian_Gulf_with_emphasis_on_pollutant_transport_modeling, last visited on 13 July 2014.

The overarching principles of the Federal Environmental Law are to:

- protect and conserve the quality and natural balance of the environment;
- control all forms of pollution and avoid harmful immediate or long term adverse effect resulting from economic, agricultural or industrial development;
- develop natural resources and conserve biological diversity;
- protect society and human beings from activities and acts that impose harm to the environment;
- protect the UAE environment from the harmful effect of activities undertaken outside the UAE; and
- comply with international and regional conventions signed by the UAE regarding the protection of the environment. International treaties entered into by the UAE include the "United Nations Convention on Climate Change for the year 1992", the "Kyoto Protocol 1997" and the "Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998".

The Federal Environmental Law addresses key aspects of environmental protection, which are:

- environmental impact assessment;
- protection of the marine environment;
- pollution from land sources;
- soil protection;
- protection of air pollution; and
- the handling of hazardous substances and wastes.

The Federal Environmental Law is administered by the Ministry of Environment and Water, together with the Federal Environmental Agency. Any entity seeking to undertake an activity that may have an impact on the environment must obtain a licence, usually from the Federal Environmental Agency (although the granting of a licence may be delegated to a local authority).³ A license will only be granted after an impact assessment has been undertaken and approved. Once granted, a licensee must strictly comply with the terms of the licence (i.e. this may require the licensee to curtail the discharge of pollutants beyond a particular threshold).

In addition to the Federal Environmental Law, federal legislation addresses specific environmental issues. This legislation includes Federal Law No. 23 of 1999, which concerns the conservation of aquatic resources in the UAE and Federal Law No. 20 of 2006, which amended Federal Law No.1 of 2002 and addresses the use of radioactive materials in the UAE.

2. Local Laws

Local laws supplement the federally enacted environmental laws, however, federal laws prevail in the event of any inconsistency or ambiguity. In Abu Dhabi, the relevant agency is the Environment Agency Abu Dhabi and its equivalent in Dubai is Dubai Municipality (Environmental Department).

³ Environmental Law, Law No. 24 of 1999, Art. 4 (UAE).

In the Emirate of Abu Dhabi, the key piece of environmental legislation is Law No. 21 of 2005 for Waste Management in the Emirate of Abu Dhabi, which, among other things, requires businesses that generate waste to reduce waste in accordance with techniques approved by the Environment Agency Abu Dhabi and also deals with the transportation, storage and treatment of waste.

The Emirate of Dubai also has environmental laws and the most relevant are Local Order No. 61 of 1991. The Dubai Government has indicated that this law will be replaced in its entirety but this has yet to occur. The other significant environmental law in Dubai is Local Order No. 7 of 2002, which governs the management of waste.

IV. Environmental Compliance in Free Zones

Free Zones are part of the country's territories but considered to be outside the customs territory and subject to customs control other than normal customs procedures.⁴ In other words, free zones are designated areas within the UAE where some of the trade barriers, tariffs, quotas, and other bureaucratic requirements differ from those contained in the Companies Law in order to attract foreign investment. The Dubai International Financial Center and the Jebel Ali Free Zone are the two most prominent economic free zones in the UAE.⁵ Such economic free zones foster an attractive environment for business by offering companies, among other things, zero tax rates on their income, no foreign exchange controls and freedom from excessive regulation.⁶

Unlike entities formed under the UAE Companies Law in mainland UAE, licenses issued by a free zone authority only permit a free zone entity to operate in the relevant free zone or outside the UAE due to the fact that each free zone is subject to the specific laws and regulations of the applicable free zone authority. This essentially means that each free zone has its own law.

Various free zones within Dubai have their own regulatory arms which deal with environmental issues. For example, Trakhees (Ports Customs and Free Zone Corporation) has a regulatory department for Environment Health and Safety (known as EHS), which regulates and enforces rules and regulations related to environmental protection such as air and water quality, marine mammals, and "landscaping" within a number of the free zones including Dubai Multi Commodities Centre, Dubai Media City and the Jebel Ali Free Zone.⁷ Similarly, Dubai Techno Park Free Zone Rules create a body named EHSS (Group Environment, Health, Safety and Security Division) to monitor environment compliance within the free zone especially during construction activities.⁸

⁴ "Free Zones", *Dubai Customs*, <http://www.dubaicustoms.gov.ae/en/Procedures/CustomsDeclaration/Pages/FreeZones.aspx>, last visited on 13 July 2014.

⁵ "Doing business in the United Arab Emirates 2009", *Baker & McKenzie*, http://www.bakermckenzie.com/files/Uploads/Documents/North%20America/DoingBusinessGuide/Dallas/br_dbi_uae_13.pdf, last visited on 13 July 2014.

⁶ "Doing business in the United Arab Emirates 2009", *Baker & McKenzie*, http://www.bakermckenzie.com/files/Uploads/Documents/North%20America/DoingBusinessGuide/Dallas/br_dbi_uae_13.pdf, last visited on 13 July 2014.

⁷ Alexis Waller, "A Guide to Environmental Regulation In Dubai And The Wider", *Mondaq*, <http://www.mondaq.com/x/243218/real+estate/A+Guide+To+Environmental+Regulation+In+Dubai+And+The+Wider>, last visited on 13 July 2014.

⁸ Techno Park Rules and Regulations, Clause 8.6, http://www.ezw.ae/media-files/2011/08/15/20110815_Appendix-5-TP-Rules-Regulations-v1-31-01-08.pdf, last visited on 18 July 2014.

V. Environment and Sustainable Development

Any entity which is involved in planning, economic development, and/or construction is obliged to consider all aspects of environmental protection, the control of pollution, and the rational use of natural resources when developing economic and social plans and undertaking projects.⁹ The Federal Environmental Agency is tasked with the overall responsibility of preparing, issuing, revising, developing and updating the standards required for environmental protection within the UAE.¹⁰ When devising these standards, the Federal Environmental Agency is required to take into consideration the then-current technological capabilities available and the economic costs involved. This balance must be achieved without undermining the objectives of environmental protection and controlling pollution.¹¹ Noncompliance with these standards is permitted in emergencies, either to protect lives or ensure the safety of a building, installation, or work area but the Federal Environment Agency and other competent authorities are to be notified.¹² In addition to these general measures, there is a specific prohibition against hunting, killing, or capturing certain birds, wild animals, and marine life.¹³ This prohibition not only extends to the sale and transportation of these animals but also destruction of their natural habitats. Any person or entity who violates this prohibition will be subject to a fine of between AED 2,000 and AED 20,000 (between USD 550 and USD 5,500) and a sentence of imprisonment for an unspecified term.¹⁴

VI. Environmental Monitoring

Each emirate is tasked with the responsibility of establishing, operating, and supervising environmental networks within its particular jurisdiction, some of which have already been established and some of which are currently under formation.¹⁵ Each environmental monitoring network is then required to notify the Federal Environmental Agency, and the authority for the applicable emirate if any pollutants are discharged by any entity or person in excess of the standards required by law.¹⁶

VII. Compliance and Penalties for Companies Extracting Off-Shore Oil and Gas

Any entity which is licensed to prospect, extract or exploit onshore or offshore oil and gas fields is specifically prohibited from discharging any polluting substance into the environment.¹⁷ Any person or entity who violates this will be subject to a fine of between AED 200,000 and AED 500,000 (between USD 55,000 and USD 135,000) and a sentence of imprisonment of between two and five years.¹⁸ This prohibition extends to drilling, exploring,

⁹ Environmental Law, Law No. 24 of 1999, Art. 9 (UAE).

¹⁰ Environmental Law, Law No. 24 of 1999, Art. 10 (UAE).

¹¹ Environmental Law, Law No. 24 of 1999, Art. 10 (UAE).

¹² Environmental Law, Law No. 24 of 1999, Art. 11 (UAE).

¹³ Environmental Law, Law No. 24 of 1999, Art. 12 (UAE).

¹⁴ Environmental Law, Law No. 24 of 1999, Art. 83 (UAE).

¹⁵ Environmental Law, Law No. 24 of 1999, Art. 13 (UAE).

¹⁶ Environmental Law, Law No. 24 of 1999, Art. 14 (UAE).

¹⁷ Environmental Law, Law No. 24 of 1999, Art. 18 (UAE).

¹⁸ Environmental Law, Law No. 24 of 1999, Art. 73 (UAE).

testing, and producing oil or gas near protected areas unless (i) the entity in question has established safety measures to safeguard against harm to land and water; and (ii) any waste is treated with the most recent technologically advanced systems available. The Federal Environmental Agency, together with individual authorities for each emirate, issues periodic guidelines and specifications for environmental safety and the management of waste resulting from the production, exploitation and transportation of oil and gas.¹⁹ Any entity which is licensed to prospect, extract or exploit onshore and offshore oil and gas fields may be asked to contribute information to the authorities when formulating new guidelines and specifications. The Federal Environmental Agency and the individual authorities for each emirate are required to carry out periodic environmental impact assessments to analyze the impact of the exploration, extraction, and exploitation of oil and gas taking place in production fields and throughout land and marine transportation routes.²⁰

VIII. Air Pollution Compliance for Industries

Any entity undertaking business within the UAE must ensure that airborne pollutants do not exceed the permitted limits,²¹ including pollutants emitted from machines, engines and vehicles producing exhaust gases.²² Any person or entity who violates this will be subject to a fine of between AED 1,000 and AED 20,000 (between USD 275 and USD 5,500).²³ Except in designated areas which are situated away from residential, industrial and agricultural areas, and the marine environment, it is prohibited to dispose of, treat or burn waste.²⁴ The authority for each individual emirate will determine the precise location and specifications for each area, including the minimum distance from designated areas in which waste disposal can take place. Any person or entity who violates this will be subject to a fine of between AED 2,000 and AED 20,000 (between USD 550 and USD 5,500).²⁵ The Environmental authorities also prohibit spraying certain pesticides and other chemical compounds on public health grounds except where specific authorization is granted by the Federal Environmental Agency and certain conditions, controls and safeguards are complied with.²⁶ In any event, when using these prescribed chemicals, care must be taken to avoid direct or indirect immediate or delayed exposure to humans, animals, plants, water courses, and other elements of the environment. Any person or entity who violates this will be subject to a fine of between AED 10,000 and AED 50,000 (between USD 2,750 and USD 13,500).²⁷

IX. Drilling, Construction and Demolition Activities

Any entity involved in exploration, drilling, construction and/or demolition activities is required by law to undertake precautions for the safe transport, storage and disposal of all

¹⁹ Environmental Law, Law No. 24 of 1999, Art. 19 (UAE).

²⁰ Environmental Law, Law No. 24 of 1999, Art. 20 (UAE).

²¹ Environmental Law, Law No. 24 of 1999, Art. 48 (UAE). Also see, Federal Cabinet Resolution No. 12 of 2006.

²² Environmental Law, Law No. 24 of 1999, Art. 49 (UAE).

²³ Environmental Law, Law No. 24 of 1999, Arts. 79 and 82 (UAE).

²⁴ Environmental Law, Law No. 24 of 1999, Art. 50 (UAE).

²⁵ Environmental Law, Law No. 24 of 1999, Art. 82 (UAE).

²⁶ Environmental Law, Law No. 24 of 1999, Art. 51 (UAE).

²⁷ Environmental Law, Law No. 24 of 1999, Art. 80 (UAE).

waste products and dust.²⁸ All emissions of smoke, gases, vapors and other fumes resulting from burning fuel or other substances involved in the exploration, drilling, extraction and production of crude oil, the generation of power and construction industries must be within permissible limits.²⁹ The entity in charge of such activities must take all necessary precautions to reduce the amount of pollutants resulting from the aforementioned activities and keep a log of all pollutants released. Any person or entity who violates this will be subject to a fine of between AED 2,000 and AED 20,000 (between USD 550 and USD 5,500).³⁰ Detailed regulations specify the precautions to be taken by industry sectors and the permissible limits for emission of smoke, gases, vapors and other fumes.

X. Quarry/Mining Law

Although there are no emirate specific laws regulating quarrying activities in Dubai or Abu Dhabi, the following Federal laws govern quarrying activities in the UAE as a whole:

- Federal Environment Law;
- Federal Cabinet Resolution No. 20 of 2008 (Quarries and Crushers Regulations);
- Federal Ministerial Resolution No. 492 of 2008 (Quarries and Crushers Environmental Guidelines); and
- Federal Ministerial Resolution No. 110 of 2010 (Quarries and Crushers Regulations).

As a preliminary point, any entity wishing to carry out quarrying activities is required to obtain an environmental license from the relevant local authority but none of the laws require the furnishing of a performance bond to a local authority (or any other authority) for rehabilitating or making good a quarry.

However, companies carrying out quarrying activities are mandated to comply with certain guidelines regarding the environment and penalties arise in the event of any breach. The obligations and relevant penalties are very much determined by specific facts and circumstances but some of these include:

- Article 15 of Federal Cabinet Resolution No. 20 of 2008, which states that “whoever through his act or neglect causes damage to the environment or others as a result of violating the provisions of the resolution shall be responsible for all necessary costs for repairing or eliminating the damages and any consequent indemnities”.
- Article 16 of Federal Cabinet Resolution No. 20 of 2008 clarifies that the indemnification for the environmental damage referred to in Article 15 shall include the “damages that affect the environment itself and prevent or reduce the lawful use thereof, temporarily or permanently, or impair its economic or aesthetic value.” The Federal Environment Agency is the body that decides the amount of the indemnity (taking into account the extent of the harm caused) and the company that is subject to the indemnity may refer the issue to the

²⁸ Environmental Law, Law No. 24 of 1999, Art. 52 (UAE).

²⁹ Environmental Law, Law No. 24 of 1999, Art. 53 (UAE).

³⁰ Environmental Law, Law No. 24 of 1999, Art. 82 (UAE).

court in the relevant jurisdiction if it disagrees with the determination of the Federal Environment Agency (including regarding the amount of the indemnity that it is required to pay).

- Federal Ministerial Resolution No. 110 of 2010, which lays down the “Quarry Rehabilitation/Restoration” process. Article 13 of this Law states that quarry and crusher operators must “perform progressive rehabilitation as they extract their sites. Progressive rehabilitation means rehabilitation shall be done sequentially within a reasonable time after extraction of quarry resources is complete. As one area of the pit or quarry is being extracted, rehabilitation must be completed in the areas where the quarry reserves have been stopped or exhausted”. As above, the company may be subject to an indemnity imposed by the Federal Environmental Agency. Penalties (of both a monetary and criminal nature) may also be imposed under Chapter VIII Federal Environmental Law. The actual penalty turns on the specific activity and breach on question. In the context of quarrying activities, the definition of “Wastes” under Federal Environmental Law is potentially relevant as it includes gaseous wastes produced by stone quarries. Article 50 states that it is prohibited to throw, treat or burn garbage and solid wastes except in places designated for such purposes away from residential, industrial and agricultural areas and the water environment. The penalty for violating Article 50 is a fine of not less than AED 2,000 and not exceeding AED 20,000 (between USD 550 and USD 5,500).

XI. Risks Associated with Non-Compliance/Breach

A breach of the Federal Environmental Law can result in penalties of between AED 1,000 and AED 10 million being levied, while custodial sentences may be imposed on culpable individuals who willfully or recklessly damage the environment. A draft amendment to the Federal Environmental Law is currently before the Federal National Council. This amendment proposes extending the application of Federal Environmental Law to entities operating in free zones as well as increasing the number of offences under the legislation and the penalties under it.

In Abu Dhabi, Cabinet Resolution No. 37 of 2001 provides that any person who intentionally or negligently damages the environment is required to make good the damage and may also be liable for additional compensation arising out of any consequential or indirect losses suffered due to the breach (i.e. the diminution of any aesthetic values). In addition to remedial action, fines of between AED 500 and AED 10 million and custodial sentences may be imposed on a perpetrator. In the case of serious and intentional dumping of radioactive waste, the death penalty may even apply.

Fines similarly apply to breaches of environmental laws in Dubai. Due to the age of the applicable legislation, these are currently lower than the fines under other regimes but we understand that they are likely to be increased significantly, however, as previously indicated we do not know when this will occur.

Blacklisting and the revocation of licenses is a further likely consequence of any breach of environmental legislation under any applicable rules.

XII. CONCLUSION

Environmental protection is an increasingly vital feature of corporate compliance and commercial licensing, both in Dubai and the UAE more widely. It is therefore recommended that any construction enterprise or business entity operating in the region should be aware of the various environmental laws and regulations. Amidst hue and cry for better environment norms, UAE has hardened its stance on environment pollution and the draft law which amends the Federal Environmental Law will crack down on environmental crimes. If reports are to be believed, violators of air quality regulation and drinking water may face fines up to AED 1 million and AED 2 million respectively in addition to imprisonment.³¹

Dubai and UAE in general have established the reputation of being investment hotpots with little regards to the environment. It has rather unfortunately established itself as having the world's largest carbon footprint.³² Stricter norms with heavier penalties will only solve a part of the problem in so far as businesses will be wary of violating laws and will put in place better compliance teams. However, the other half of the problem can only be tackled by making consumers and businesses alike about the ill effects of environmental damage and the existence of such laws.

³¹ "UAE gets tough on environmental crimes", *Gulfnews.com*, <http://gulfnews.com/news/gulf/uae/environment/uae-gets-tough-on-environmental-crimes-1.1308702>, last visited on 20 June 2014.

³² "UAE has world's largest environmental footprint", *The National*, <http://www.thenational.ae/news/uae-news/environment/uae-has-worlds-largest-environmental-footprint>, last visited on 22 June 2014.